

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1614 CUTTACK, WEDNESDAY, NOVEMBER 24, 2004 / MARGASIRA 3, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th October 2004

No. 8862-li/1(B)-18/1995-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2004 in Industrial Disputes Case No. 446 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of IPITEX International Limited, Bhubaneswar and its Workman Smt. Chapala Swain was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 446 OF 1995

Dated the 31st May 2004

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Br.)

Presiding Officer, Labour Court

Bhubaneswar.

Between :

The Management of . . . First Party—Management
IPITEX International Limited
Bhubaneswar.

And

Its Workman . . . Second Party—Workman
Smt. Chapala Swain.

Appearances :

For the First Party—Management . . . Shri M. Das

For the Second Party—Workman herself . . . Smt. Chapala Swain

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 18042 (5)-L.E., dated the 12th December 1995 for adjudication and award.

2. The terms of reference may briefly be stated as follows :—

“Whether the action in dismissing the services of Smt. Chapala Swain with effect from the 19th August 1994 by the Management of M/s. IPITEX International Limited, Bhubaneswar is legal and/or justified ? If not, to what relief she is entitled ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present reference are that workman Smt. Chapala Swain was engaged as Tailer under the Management of M/s. IPITEX International Limited, Bhubaneswar (in short the management) with effect from the 20th December 1982 and continued to work as such till the date of dismissal on the 19th August 1994. According to the workman, the management without any rhyme or reason dismissed her from service without giving any notice or notice pay and retrenchment compensation and had thereby violated the mandatory provisions as contemplated under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is categorically averred by the workman that the management dismissed her from service with effect from the 19th August 1994, on the ground that she along with other employees went on strike and staged dharana in front of the administrative building of the management with effect from the 29th July 1994 till the 30th July 1994 and collapsed the administration of the management. But according to the workman the above reasons were quite false, baseless and concocted. Neither any charge was framed nor any domestic enquiry was conducted against her for such acts of misconduct. After such illegal dismissal she made representation to the Managing Director and thereby put forth her grievances. But all the efforts in this respect went in vain. When no fruitful result was forthcoming, she was constrained to raise a dispute before the District Labour Officer (Khurda), Bhubaneswar but the conciliation proceeding initiated by the District Labour Officer (Khurda), Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government for adjudication. The workman has categorically averred that the action of the management in dismissing her from the service with effect from the 19th August 1994 was illegal, unjustified, unfair and contrary to the principles of natural justice. On the above backgrounds the workman has now prayed for her reinstatement in service with full back wages. Hence, the reference.

4. The management, on the other hand, entered appearance and filed its written statement admitting the engagement as well as the dismissal of the workman with effect from the 20th December 1988 till the 19th August 1994. According to the management the workman on the 26th July 1994 absented from her duty unauthorisedly without submitting any leave application and on the next day i. e., the 27th July 1994 she along with other employees went on strike which continued till the 30th July 1994. During strike the workman and other employees

wrongfully confined the Managing Director and the management personnel and threatened to do away their lives. According to the management such omissions and commissions committed by the workman constituted serious acts of misconduct, and since the above acts of misconduct committed by the workman was personally witnessed by the Managing Director, the management felt that it would redundant to hold a domestic enquiry against the workman to find out her guilt with regard to the offences committed by her. It is categorically averred in the written statement that due to lack of orders and stiff competition the management is unable to carry on its industrial activity and has informed the Government of Orissa in the Labour & Employment Department intending to close down the establishment with effect from the 13th April 1995 and in fact closed down the establishment from the aforesaid date. According to the management the action taken by the management in dismissing the services of the workman with effect from the 19th August 1994 was legal and justified and the workman is not entitled to any relief as sought for. Accordingly the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the action in dismissing the services of Smt. Chapala Swain with effect from the 19th August 1994 by the Management of M/s. IPITEX International Limited, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief she is entitled ?

6. The workman in support of her case has examined herself as W. W. 1 and has relied upon the xerox copies of the documents such as, dismissal order, the representation and the letter, dated the 30th November 1994 addressed to the District Labour Officer (Khurda), Bhubaneswar marked as Exts. 1 to 3 respectively. On the other hand, the management has examined one Deepak Kumar Biswal as M. W. 1 and has also relied upon the xerox copies of the documents, such as, letter dated the 13th February 1995 addressed to the Secretary to Government of Orissa, Labour & Employment Department and the dismissal order, dated the 19th August 1994 marked as Exts. A and B respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)* :—For the better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The workman concerned has led evidence to the effect that she was working as Tailor under the management with effect from the 20th December 1982 till she was dismissed from her service on the 19th August 1994. She has categorically stated that the management while dismissing her from service had not given any notice or notice pay and retrenchment compensation to her and without conducting any enquiry terminated her from the services with effect from the 19th August 1994 for which she has raised the dispute before the Labour

Officer but the conciliation proceeding initiated by the District Labour Officer ended in failure. During her evidence she has duly proved the dismissal order and the representations addressed to the Managing Director of the management and to the District Labour Officer (Khurda), Bhubaneswar marked as Exts. 1 to 3 respectively. She admits during her cross-examination that she was not present in the office on the 26th July 1994 and had applied for leave and on the next date i. e., the 27th July 1994 she along with other employees met the Managing Director and in fact did not perform the duty. So far as the strike is concerned, she has replied in the negative. On the other hand, the perusal of the evidence of M. W. 1 clearly reveals that the workman was working as Tailor under the management. On the 26th July 1994 she was on leave and on the 27th July 1994 she joined in the strike instead of reporting for duty. The strike continued till the 30th July 1994 and the workman went on strike along with others from the 27th July 1994 to the 30th July 1994 and staged dharana in front of the administrative building of the management. On the 1st August 1994 the workman reported for duty but the Managing Director who had witnessed the entire incident took action against her and in fact dismissed her from service with effect from the 19th August 1994. M. W. 1 has further stated that the factory was closed since the 13th April 1995. During the course of his evidence, he has proved the notice with regard to closure up the factory and the dismissal order Exts. A and B respectively. During cross-examination M. W. 1 admits that no domestic enquiry had been conducted against the workman before issuance of the dismissal order, Ext. B. It has been suggested to him that the factory of the management is still functioning and that the company is exporting garments to which he has given a negative reply. He has also denied the exportation of the garments even after closure up the factory. He further admits in his cross-examination that he cannot produce any document to show that if the alleged incident had reported to the police for taking action at this end. It has been further suggested that no such occurrence had been taken place inside the factory premises and that no information was given to the police to which he has replied in the negative.

8. On careful perusal and scrutiny of the evidence already led by the parties, it is seen that the workman was working under the management as Tailor with effect from the 20th December 1982 till she was dismissed from service by the management on the 19th August 1994. The reason for such dismissal was that she along with other employees went on strike with effect from the 27th July 1994 till the 30th July 1994 and in fact collapsed the entire administration of the management by wrongfully confining the personnel of the management. Since the Managing Director was a direct witness to the said strike and was very much present on the scene of occurrence he was satisfied and convince about the acts of misconduct of the workman. Subsequently the management felt no necessity to conduct a domestic enquiry against the workman. No doubt the Managing Director was an witness to the occurrence but in absence of any domestic enquiry it cannot be definitely said that the workman had participated in the strike, staged dharana in front of the administrative building of the management. The management has taken a plea that since the Managing Director was very much present on the scene of occurrence during the period of strike but in absence of any domestic enquiry the order of dismissal in my considered view, was bad and not tenable in the eye of law. By not conducting any enquiry the management has totally been failed to prove the acts of misconduct committed by the workman. Therefore the plea taken by the

management to the effect that there was no necessity to hold a domestic enquiry to prove the guilt of the workman since the Managing Director was satisfied and convinced about the acts of misconduct committed by her is without substance. The satisfaction, dissatisfaction or the conviction of the authority of the management is not the criterion to dismiss an employee without holding any enquiry. The order of dismissal being made without any enquiry would be therefore bad. In enquiries regarding dismissal of employees the principles of natural justice must be followed and the employee against whom disciplinary action is sought to be taken must be given a charge-sheet, evidence against him must be recorded in his presence and he must be given an opportunity to rebut the evidence.

9. In this regard it is profitable to mention the following paramount decisions containing the well settled principles of law in the matter of domestic enquiry. In the case of Union of India and another *Vrs. Mohammad Ramjan Khan* reported in AIR 1991 (Supreme Court) 471 it has been observed by the Hon'ble Apex Court as follows :

“In a disciplinary proceeding the reasonable opportunity includes—

- (a) An opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him and the allegations on which such charges are based.
- (b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.
- (c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposed to inflict one of three punishments and communicate to the Government servant.

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We therefore come to the conclusion that supply of a copy of the enquiry report along with recommendation if any in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would therefore be entitled to the supply of copy thereof.”

In the case of *Sur Enamel and Stamping Works Vrs. Their workmen* reported in A. I. R. 1963 (Supreme Court) 1914 Their Lordships have held as follows :

“An enquiry cannot be said to have been properly held unless—

- (i) The employee proceeded against has been informed clearly of the charges levelled against him.
- (ii) The witnesses are examined ordinarily in presence of the employee in respect of the charges.
- (iii) The employee is given a fair opportunity to cross-examine the witnesses.
- (iv) He has given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter.
- (v) And, the Enquiry Officer records his findings with reason for the same in his report”.

But in the present case at hand the management had not conducted any enquiry before issuance of the dismissal order, Ext. B. What the law requires before dismissal of an employee is to conduct an enquiry. But in the instant case the order of dismissal being made without enquiry which in my view, was illegal, arbitrary and unjustified. After carefully examining the entire materials available on record and keeping in view the settled position of law, I am of the confirmed opinion that the action of the management in dismissing the services of the workman with effect from the 19th August 1994 is illegal and unjustified. In that view of the matter the workman is entitled to the relief of reinstatement.

10. The perusal of the schedule of reference clearly emerge that the workman has been dismissed from service with effect from the 19th August 1994. No cogent material is forthcoming to prove and establish that the workman has been gainfully employed elsewhere with effect from the date of dismissal. Under the above circumstances the workman is entitled to be reinstated in service but on the facts and circumstances of the case as the workman had not worked with effect from the date of dismissal she is entitled to get a lump sum compensation to the tune of Rs. 5,000 in lieu of back wages which, in my opinion would meet the ends of justice in the instance case. Both the above issues are answered accordingly.

11. Hence it is ordered :

That the action in dismissing the services of Smt. Chapala Swain with effect from the 19th August 1994 by the Management of M/s. IPITEX International Limited, Bhubaneswar is neither legal nor justified. The Workman Smt. Swain is entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (Rupees Five thousand only) in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO

31-5-2004

Presiding Officer

Labour Court, Bhubaneswar

P. K. SAHOO

31-5-2004

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

D. MISHRA

Under-Secretary to Government